



The Saginaw Chippewa Indian Tribe Of Michigan

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TESTIMONY OF DENNIS V. KEQUOM

Chief, Saginaw Chippewa Indian Tribe

BEFORE THE HOUSE REGULATORY AND REFORM COMMITTEE

HEARING ON HOUSE CONCURRENT RESOLUTION 54

JULY 1, 2010

MR CHAIRMAN AND MEMBERS OF THIS COMMITTEE, MY NAME IS DENNIS KEQUOM AND I AM THE CHIEF OF THE SAGINAW CHIPPEWA INDIAN TRIBE. I WANT TO THANK YOU FOR THE OPPORTUNITY TO TESTIFY TODAY ON THIS IMPORTANT MATTER.

ON BEHALF OF THE SAGINAW CHIPPEWA INDIAN TRIBE, I AM HERE TO EXPRESS OUR STRONG OPPOSITION TO THE PASSAGE OF THIS PROPOSED GAMING COMPACT.

MR. CHAIRMAN, FOR THE LAST SEVERAL WEEKS, WE HAVE MET WITH MANY MEMBERS OF THIS COMMITTEE TO EXPRESS OUR CONCERNS AND ASK THAT THE MICHIGAN STATE LEGISLATURE NOT APPROVE THIS GAMING COMPACT FOR A NUMBER OF IMPORTANT POLICY AND PROCEDURAL REASONS.

IN OUR MEETINGS WE HAVE TOLD COMMITTEE MEMBERS AND HOUSE LEADERSHIP THAT THE CONSIDERATION OF THIS COMPACT BY THE MICHIGAN LEGISLATURE IS SIMPLY PREMATURE AND UNWARRANTED AT THIS TIME. WE HAVE EXPRESSED OUR VIEW THAT THE DEPARTMENT OF INTERIOR WOULD NOT CONSIDER GAMING COMPACTS UNTIL THE LAND IS ACCEPTED INTO TRUST. WE ALSO BELIEVE THAT THIS PROCESS IS PREMATURE IN LIGHT OF THE FACT THAT THE DEPARTMENT OF INTERIOR IS DEVELOPING A NEW GAMING POLICY THAT WOULD REQUIRE EXTENSIVE CONSULTATION ON THESE OFF-RESERVATION GAMING APPLICATIONS.

ONE FACT IS CLEAR – EVERYTHING WE HAVE TOLD YOU HAS COME TO FRUITION. ON JUNE 16TH, THE DEPARTMENT OF INTERIOR SENT YOU A LETTER CLEARLY INDICATING THAT THE DEPARTMENT WILL NOT CONSIDER ANY GAMING COMPACT THAT INCLUDES LANDS THAT “ARE NOT NOW, OR MAY NEVER BE, INDIAN LANDS OF SUCH INDIAN TRIBE.” AS A RESULT OF THIS LETTER, THE DEPARTMENT OF INTERIOR FORCED THE TRIBE TO WITHDRAW THEIR GAMING COMPACT OR HAVE IT FACE CERTAIN REJECTION. I WOULD LIKE TO SUBMIT THE DEPARTMENT OF INTERIOR’S LETTER FOR THE HEARING RECORD.

FURTHERMORE, JUST LAST WEEK, THE DEPARTMENT OF INTERIOR ANNOUNCED THAT IT IS ADOPTING A COMPREHENSIVE REVIEW ON THESE TYPE OF OFF-RESERVATION GAMING APPLICATIONS. THE DEPARTMENT ANNOUNCED THAT IT WILL CONDUCT AN EXTENSIVE CONSULTATION WITH INDIAN TRIBES OF THE “TWO-PART DETERMINATION” PROCESS. AT THE END OF THE CONSULTATION PROCESS, THE DEPARTMENT WILL THEN ASSESS ITS POLICY ON THESE CONTROVERSIAL GAMING APPLICATIONS. IT IS MY UNDERSTANDING THAT THIS POLICY REVIEW AND CONSULTATION PROCESS WILL TAKE SEVERAL MONTHS AT A MINIMUM. I ALSO WANT TO SUBMIT THE MEMORANDUM OF INTERIOR SECRETARY KEN SALAZAR ON THIS ISSUE.

MR. CHAIRMAN, THE DEPARTMENT OF INTERIOR IS THE PLACE WHERE THESE ISSUES NEED TO BE ADDRESSED – NOT HERE – AND CERTAINLY NOT NOW. JUDGING BY THE DEPARTMENT’S HANDLING OF PAST OFF-RESERVATION GAMING APPLICATIONS – I THINK IT IS SAFE TO SAY THAT A FINAL DECISION TO TAKE THESE LANDS INTO TRUST IS YEARS AWAY.

LET ME JUST MAKE ONE MORE POINT. OUR TRIBE SIGNED A COMPACT IN 1993 IN WHICH WE PLEDGED TO THE CITIZENS OF MICHIGAN AND TO THE OTHER FEDERALLY RECOGNIZED TRIBES IN MICHIGAN, THAT WE WOULD NOT MAKE AN APPLICATION TO TAKE LAND INTO TRUST FOR OFF RESERVATION GAMING PURPOSES UNLESS WE HAD A REVENUE SHARING AGREEMENT WITH THE OTHER TRIBES. -THE LITTLE RIVER BAND OF OTTAWA INDIANS MADE THE SAME PROMISE IN ITS COMPACT. THE COMPACT AMENDMENT UNDER CONSIDERATION IS AN UNFORTUNATE AND CYNICAL ATTEMPT TO RELIEVE ONE TRIBE OF AN OBLIGATION THAT WAS NEGOTIATED IN GOOD FAITH BY ALL OF THE 1993 AND 1998 COMPACTED TRIBES AND THE STATE OF MICHIGAN. WE HAVE UPHOLD OUR END OF THE BARGAIN AND WE WOULD HOPE THE STATE OF MICHIGAN WOULD KEEP ITS PROMISE AS WELL.

IT IS TRULY UNFORTUNATE THAT THIS GOVERNOR, IN THE WANING DAYS OF HER ADMINISTRATION, WOULD ENCOURAGE TRIBES TO CONDUCT OFF-RESERVATION GAMING IN VIOLATION OF THE COMPACTS THAT THE TRIBES NEGOTIATED WITH THE STATE. WE DO NOT FEEL THAT IS RIGHT OR IN THE BEST INTERESTS OF THE PEOPLE IN MICHIGAN.

THE GOVERNOR'S ACTIONS ARE ALSO INCONSISTENT WITH THE POLICY AND SPIRIT OF THE GOVERNOR'S OWN EXECUTIVE ORDER. EXECUTIVE ORDER NUMBER 2004-5 REQUIRES EXECUTIVE BRANCH DEPARTMENTS AND AGENCIES TO ADHERE TO CERTAIN PRINCIPLES WHEN FORMING OR IMPLEMENTING POLICIES OR LAWS WITH TRIBAL IMPLICATIONS. THIS EXECUTIVE ORDER REQUIRES THAT THE STATE EXECUTIVE BRANCH TAKE INTO CONSIDERATION THE RESPECT FOR INDIAN TRIBAL SELF GOVERNMENT AND TO ENSURE THAT THE STATE'S ACTIONS DO NOT CONFLICT WITH FEDERAL LAWS AND REGULATIONS DESIGNED TO PROTECT AND ASSIST TRIBAL GOVERNMENTS AND TRIBAL MEMBERS. THE GOVERNOR'S EXECUTIVE DIRECTIVE ALSO PROVIDES FOR CONSULTATION WITH TRIBES THAT MAY BE IMPACTED BY THE EXECUTIVE BRANCH POLICIES OR PROPOSED LEGISLATION.

SADLY, NONE OF THE POLICIES OR PRINCIPLES PROVIDED IN THE GOVERNOR'S OWN DIRECTIVE WERE APPLIED TO THE GOVERNOR'S UNILATERAL DECISION MADE IN THIS CASE. WE ARE NOT AWARE OF ANY CONSULTATION BETWEEN THE GOVERNOR'S OFFICE AND OTHER TRIBES REGARDING THE IMPACT THIS AMENDMENT WOULD HAVE ON THE COMPACT'S REQUIREMENT FOR REVENUE SHARING AGREEMENT WITH ALL OTHER TRIBES.

MR. CHAIRMAN, THERE IS A PROCESS TO CONSIDER THESE OFF-RESERVATION GAMING PROPOSALS. THE FACT IS THAT THE PLACE FOR THESE DISCUSSIONS ARE IN WASHINGTON, D.C. – NOT HERE IN LANSING. THE COMMITTEE SHOULD ALLOW THE PROCESS TO PROCEED IN AN ORDERLY FASHION.

IF THE STATE LEGISLATURE PASSES THIS GAMING COMPACT THEN THERE WILL BE NOTHING TO PREVENT EVERY OTHER TRIBE IN MICHIGAN FROM ASKING FOR THE SAME TREATMENT BY THE STATE FOR THEIR OWN OFF-RESERVATION GAMING CASINOS. I THINK WE CAN ALL AGREE THAT WOULD NOT BE GOOD FOR OUR STATE.

THANK YOU AGAIN FOR THE OPPORTUNITY TO TESTIFY TODAY.



United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, DC 20240



MAY 20 2005

Honorable Ron Suppah
Chairman, Confederated Tribes of the
Warm Springs Reservation of Oregon
P.O. Box C
Warm Springs, Oregon 97761

Dear Chairman Suppah:

On April 8, 2005, we received the Tribal-State Compact for the regulation of Class III Gaming between the Confederated Tribes of the Warm Springs Reservation of Oregon (Tribes) and the State of Oregon (State), executed on April 6, 2005 (Compact). Under the Indian Gaming Regulatory Act (IGRA) 25 U.S.C. § 2710(d)(8)(C), the Secretary of the Interior (Secretary) may approve or disapprove the Compact within forty-five days of its submission. Under IGRA, the Secretary can disapprove the Compact if she determines that the Compact violates IGRA, any other provision of Federal law that does not relate to jurisdiction over gaming on Indian lands, or the trust obligation of the United States to Indians.

Decision

We have completed our review of the Compact along with the submission of additional documentation submitted by the parties and some third parties. For the following reason, the Compact is hereby disapproved.

Discussion

Article V(C) of the Compact authorizes a gaming facility on the Cascade Locks Land, "provided that the federal government takes the Cascade Locks Land into trust for the Tribes for gaming purposes pursuant to Section 20(b)(1)(A) of IGRA, 25 U.S.C. § 2719(b)(1)(A)." Section 2710(d)(8)(A) of IGRA authorizes the Secretary "to approve any Tribal-State compact entered into between an Indian tribe and a State governing gaming *on Indian lands of such Indian tribe*." This section does not authorize the Secretary to approve a compact for the conduct of Class III gaming activities on lands that are not now, and may never be, Indian lands of such Indian tribe.

In addition, IGRA requires that gaming may only occur on lands subject to the tribe's jurisdiction and over which the tribe exercises governmental power. Currently, the Cascade Locks Land is not currently held in trust for the benefit of the Tribes and will have to undergo a rigorous process under 25 C.F.R. Part 151 before a decision can be made regarding whether to take the land into trust. In addition, compliance with the requirements of Section 20(b)(1)(A) of IGRA will have to be addressed before the land is eligible for gaming. This provision of IGRA requires a Secretarial determination, following consultation with appropriate State and local

officials, including officials of nearby tribes, that a gaming establishment on the newly-acquired trust lands is in the best interest of the Tribes and their members, and not detrimental to the surrounding community. After this determination is made, the Governor of the State must decide whether he will concur in the Secretary's determination. Therefore, approval of the Compact before the Cascade Locks Land is taken into trust would violate Section 2710(d)(8)(A) of IGRA, and thus, the Compact must be disapproved.

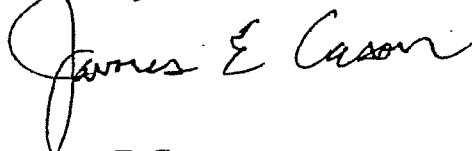
We are aware that the Department has previously approved compacts for the regulation of class III gaming activities before the specified lands qualified as Indian lands under IGRA. However, on closer examination of the statute, we have concluded that the Secretary's authority to act on proposed compacts under 25 U.S.C. § 2710(d)(8)(A) is informed by Section 20 of IGRA. Thus, the proposed gaming lands are subject to a two-part determination and State Governor concurrence under section 20. These two conditions must be complete before Departmental action on a compact can occur.

This decision does not address the other terms and conditions embodied by the proposed compact. The Department is supportive of the efforts of the Tribes and the Governor to discuss Indian gaming. The Department is encouraged by the prospects that there is a foundation for mutual agreement on these issues at some point in the future.

Only after the Tribes have acquired the Cascade Locks Land into trust, will the Department consider the terms and conditions of a timely submitted compact pursuant to the applicable provisions of IGRA. Until then, we trust that the Warm Springs Tribes will continue to engage in Class III gaming activities on its reservation.

We regret that our decision could not be more favorable at this time. A similar letter is being sent to the Honorable Theodore R. Kulongoski, Governor, State of Oregon.

Sincerely,

A handwritten signature in black ink that reads "James E. Cason". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

James E. Cason
Associate Deputy Secretary



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JUN 15 2010

The Honorable Bert Johnson
House of Representatives
State of Michigan
State Capitol
Lansing, Michigan 48913

Dear Representative Johnson:

Thank you for your letter dated May 10, 2010 addressed to Secretary Salazar seeking information and clarification of the Department of the Interior's Indian gaming policies. Your letter was forwarded to this office for a response.

As to your first question Section 2710(d)(8)(A) of the Indian Gaming Regulatory Act (IGRA) authorizes the Secretary "to approve any Tribal-State compact (compact) entered into between an Indian tribe and a State governing gaming *on Indian lands of such Indian tribe*." This section does not authorize the Secretary to approve a compact for the conduct of Class III gaming activities on lands that are not now, and may never be, Indian lands of such Indian tribe. Thus if a compact is "site specific" and identifies land that is not now or may never be Indian lands in accordance with IGRA and the tribe has not identified land that is eligible for gaming in the compact the compact may be disapproved.

Your second question, asks whether Little River Band of Chippewa Indians (Band) has submitted a proposal to take the Muskegon racetrack into trust. No, there is no pending application at the Department to take the Muskegon racetrack into trust.

Your third question asks whether the Department has recently adopted a policy on revenue sharing. No "new policy" has been adopted. As previous compact decision letters have stated, in order to determine whether revenue sharing violates 25 U.S.C. § 2710(d)(4), we first look to whether the State has offered meaningful concessions. We have traditionally viewed this concept as one where the State concedes something that it was otherwise not required to negotiate that provides a benefit to the Tribe, i.e. exclusivity or some other benefit. In other words, we examine whether the State has made meaningful and significant concessions in exchange for receiving revenue sharing.

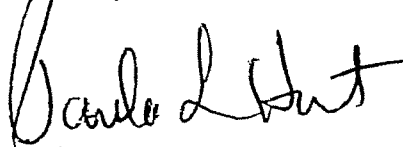
The next step in our analysis is to determine whether these concessions result in a substantial economic benefit to the Tribe. The payment to the state must be appropriate in light of the value of the economic benefit conferred on the Tribe. This analysis (meaningful concessions by the State and substantial economic benefit conferred on the tribe) allows us to ascertain that revenue-

sharing payments are the product of arms-length negotiations, and not tantamount to the imposition of a tax, fee, charge or other assessment prohibited under 25 U.S.C. § 2710(d)(4). You also ask whether the Band's submitted compact meets the policy requirements regarding the revenue sharing payments in the compact. The Band's compact is presently under review. Until a decision is made on that compact we cannot answer this question.

Your final question asks if the Department is considering any new policies that may affect the Band's application for a two-part determination. The Department is in the process of reviewing the previous Administration's gaming policies, no decisions have been made regarding those policies.

We hope this information addresses the concerns raised in your letter. Thank you for your interest in Indian gaming issues.

Sincerely,

A handwritten signature in black ink, appearing to read "Paula L. Hart", written over a horizontal line.

Paula L. Hart

Director, Office of Indian Gaming